



California Fair Political Practices Commission

May 16, 1986

James Longtin
City Attorney
City of La Quinta
78-105 Calle Estado
La Quinta, CA 92253

Re: Your Request for Advice
Our File No. A-86-080

Dear Mr. Longtin:

This is in response to your letter dated April 16, 1986, seeking additional advice regarding the duties and responsibilities of La Quinta Mayor John Pena under the conflict of interest provisions of the Political Reform Act.^{1/}

FACTS

In your previous letter dated March 4, 1986, you provided the following facts:

John Pena is a City Council Member and currently Mayor of the City of La Quinta, a general law city. Mayor Pena proposes to become a shareholder, with at least twenty percent equity interest, and Vice-President of Pueblo Viejo Development Corporation (PVDC), a California corporation, which will engage in the planning, design and construction of development and redevelopment projects in the Coachella Valley, a geographical area which includes approximately seven

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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cities, including La Quinta. PVDC has contracted with the City of Coachella, a neighboring city to La Quinta, to perform various marketing and feasibility studies for the future development and redevelopment of downtown Coachella. PVDC is currently negotiating an agreement with the City of Coachella wherein PVDC will have the exclusive right to joint venture and develop several designated sites within the City. PVDC is currently seeking funding for infrastructure and street improvements, city hall and park complex, apartment units, commercial shopping center, and hotel/conference center all to be constructed in joint venture with the City of Coachella.

The City of Coachella and/or PVDC could potentially obtain loans from Dixie Savings & Loan, a wholly owned subsidiary of Landmark Corporation, which is a major land developer in the City of La Quinta. PVDC, in conjunction with the City of Coachella, may also contract with the County of Riverside, and state and federal agencies relative to development and redevelopment of the above mentioned projects in the City of Coachella.

QUESTIONS

1. In your previous letter, you asked the following questions:
 - A. In the event PVDC makes application for any project approval or enters into any contract with the City of La Quinta, does Mayor Pena have a conflict of interest which requires disclosure and abstention as a decisionmaker?
 - B. Does the proximity of the City of La Quinta to the City of Coachella and/or the potential that both cities may contract with the same county, state and federal agencies present any potential conflicts of interest requiring disclosure and abstention?
 - C. Does the fact that PVDC and/or City of Coachella may enter into loan agreements with Dixie Savings and Loan, a wholly owned subsidiary of Landmark Corporation, preclude Mayor Pena from voting on Landmark projects or present any other potential conflict of interest relative to Mayor Pena's

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activities as Mayor and Council Member of the City of La Quinta?

Having received our advice letter dated April 3, 1986, you are now asking our whether our advice would be different if Mayor Pena has no interest in PVDC (either as a shareholder, director, officer, or otherwise), but rather Mayor Pena acts as a contract consultant to PVDC. In this capacity, Mayor Pena would "perform governmental and public affairs and public relations consultation including giving advice and actualizing ways and means to obtain changes in zoning and other local government decision-making in neighboring communities of La Quinta, including the City of Coachella." Mayor Pena would be paid for his services based upon an hourly agreed upon rate.

2. In his role as a contract consultant does Mayor Pena have a conflict of interest as to his decision-making as a City Councilmember of La Quinta relative to decisions involving clients or others doing business with PVDC or involving any other persons or corporations to which Mayor Pena renders services as a contract consultant?

ANALYSIS

The Act prohibits a public official from making, participating in making or in any way attempting to use his official position to influence a governmental decision in which the official has a financial interest. Section 87100. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family, or on:

* * *

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(c).

Accordingly, as a contract consultant, Mayor Pena may not participate in any decision which will have a material

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financial effect on himself or on any client, including PVDC, which is a source of income of \$250 or more in the 12 months preceding the decision.^{2/} Mayor Pena is also prohibited from participating in any decision in which PVDC or any other source of income appears before him in connection with the decision. 2 Cal. Adm. Code Section 18702.1(a)(2). However, Mayor Pena is not disqualified with respect to his client's sources of income.

With regard to whether the proximity of the City of La Quinta to the City of Coachella and/or the potential that both cities may contract with the same county, state and federal agents presents any potential conflicts of interest requiring disqualification, our previous advice remains unchanged because PVDC is still a source of income to Mayor Pena. We advised:

This is a very broad question. In general, the proximity of these two cities combined with PVDC's financial dealings with the City of Coachella may create an appearance of conflict for situations in which Mayor Pena, as an elected official of the City of La Quinta, is involved in decisions which may serve to accomplish the purpose for which he receives the income. See, Commission regulation 2 Cal. Adm. Code Section 18702.1(b)(2)(B) which prohibits a public official from participating in a decision which will affect a source of income when there is a nexus between the governmental decision and the purpose for which the official receives income. In addition, the answer to your question may depend upon whether there

^{2/} Section 82030(a) provides that when an official owns, directly or indirectly a 10% or greater interest in a business entity, the gross receipts to the business entity are income to the official on a pro rata basis. Since Mayor Pena would presumably own 100% of the business entity providing consultant services, income would be attributed to him on a 100% basis.

As we advised previously, the Commission has adopted regulations which specify when the reasonably foreseeable effect of a decision will be considered material. These regulations are contained in 2 Cal. Adm. Code Sections 18702, 18702.1 and 18702.2 (copies enclosed) and set forth guidelines depending on the type of financial interest which would be affected.

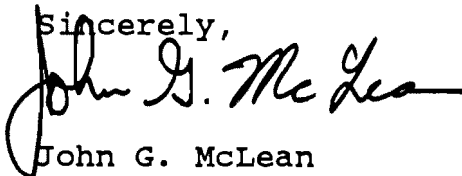
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would be a material financial effect on PVDC, as discussed above.

With regard to the fact that Dixie Savings and Loan ("Dixie") may make loans to PVDC and/or the City of Coachella, Dixie would no longer be a source of income to Mayor Pena, because he would not have an ownership interest in PVDC. Accordingly, Mayor Pena would not be prohibited from participating in decisions affecting Dixie or its parent, Landmark Corporation.

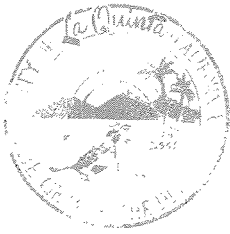
If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

A handwritten signature in black ink, appearing to read "John G. McLean". The signature is fluid and cursive, with a large initial "J" and "M".

John G. McLean
Counsel
Legal Division

JGM:plh



City of La Quinta

78-105 CALLE ESTADO - LA QUINTA, CALIFORNIA 92253 - (619) 564-2246

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April 16, 1986

California Fair Political
Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

Attn: John G. McLean, Staff Attorney
Legal Division

RE: Advice Letter No. A-86-080
John Pena, Mayor

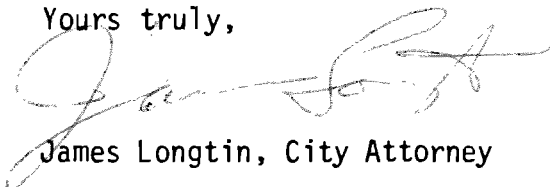
Dear Mr. McLean:

Thank you for your advice letter dated April 3rd regarding the above conflict of interest request for opinion. Mayor Pena and I have discussed the contents of your advice letter and we hereby request your further advice on two additional questions.

1. Would your opinion and advice as to questions one, two, and three be different if Mayor Pena had no interest in PVDC (either as shareholder, director, officer, or otherwise), but rather Mayor Pena acts as a contract consultant to PVDC for performance of the following contract services for the following compensation. Mayor Pena to perform governmental and public affairs and public relations consultation including giving advice and actualizing ways and means to obtain change in zoning and other local government decision-making in neighboring communities of La Quinta, including the City of Coachella. Mayor Pena would be paid for his services based upon an hourly agreed upon rate.
2. In his role as a contract consultant, as referred to in (1) above, does Mayor Pena have a conflict of interest as to his decision-making as a City Council member of La Quinta relative to decisions involving clients or others doing business with PVDC or involving any other persons or corporations to which Mayor Pena renders services as a contract consultant?

Your prompt response to the above questions is sincerely appreciated.

Yours truly,



James Longtin, City Attorney

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MAILING ADDRESS - P.O. BOX 1504 - LA QUINTA, CALIFORNIA 92253



California Fair Political Practices Commission

April 22, 1986

James Longtin
La Quinta City Attorney
P.O. Box 1504
La Quinta, CA 92253

Re: 86-080

Dear Mr. Longtin:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John G. McLean".

John G. McLean
Counsel
Legal Division

JGM:plh



California Fair Political Practices Commission

April 3, 1986

James Longtin
City Attorney
City of La Quinta
78-105 Calle Estado
La Quinta, CA 92253

Re: Your Request for Advice
Our File No. A-86-080

Dear Mr. Longtin:

Thank you for your letter requesting advice concerning the duties of Mayor John Pena under the conflict of interest provisions of the Political Reform Act.^{1/} The facts are as follows.

FACTS

John Pena is a City Councilmember and currently Mayor of the City of La Quinta, a general law city. Mayor Pena proposes to become a shareholder, with at least 20 percent equity

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. You should note that this advice is limited to the application and interpretation of the Political Reform Act. Government Code Section 1090, which concerns contracts made by public agencies, may also apply to your situation. We cannot advise you concerning Section 1090, but you should consider contacting the Attorney General's Office for advice regarding that statute. See also, Thomson v. Call (1985) 38 Cal.3d 633, 214 Cal.Rptr. 139.

interest, and Vice-President of Pueblo Viejo Development Corporation (PVDC), a California corporation, which will engage in the planning, design and construction of development and redevelopment projects in the Coachella Valley, a geographical area which includes approximately seven cities, including La Quinta. PVDC has contracted with the City of Coachella, a neighboring city to La Quinta, to perform various marketing and feasibility studies for the future development and redevelopment of downtown Coachella. PVDC is currently negotiating an agreement with the City of Coachella wherein PVDC will have the exclusive right to enter into joint ventures and develop several designated sites within the City. PVDC is currently seeking funding for infrastructure and street improvements, city hall and park complex, apartment units, commercial shopping center, and hotel/conference center all to be constructed in a joint venture with the City of Coachella.

The City of Coachella and/or PVDC could potentially obtain loans from Dixie Savings & Loan, a wholly-owned subsidiary of Landmark Corporation, which is a major land developer in the City of La Quinta. PVDC, in conjunction with the City of Coachella, may also contract with the County of Riverside, and state and federal agencies relative to development and redevelopment of the above-mentioned projects in the City of Coachella.

QUESTIONS

You have asked the following questions:

1. In the event PVDC makes application for any project approval or enters into any contract with the City of La Quinta, does Mayor Pena have a conflict of interest which requires disclosure and abstention as a decisionmaker?

2. Does the proximity of the City of La Quinta to the City of Coachella and/or the potential that both cities may contract with the same county, state and federal agencies present any potential conflicts of interest requiring disclosure or abstention?

3. Does the fact that PVDC and/or the City of Coachella may enter into loan agreements with Dixie Savings and Loan, a wholly owned subsidiary of Landmark Corporation, preclude Mayor Pena from voting on Landmark projects or present any other potential conflict of interest situation relative to Mayor Pena's position as Mayor and Councilmember of the City of La Quinta?

4. Does the Commission contemplate any other potential conflicts of interest of Mayor Pena relative to the above stated factual situation?

DISCUSSION

Section 87100 prohibits a public official from making, participating in, or attempting to influence, any governmental decision in which he knows or has reason to know he has a financial interest. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision would have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(a)-(e).

The Commission has adopted regulations which specify when the reasonably foreseeable effect of a decision will be considered material. These regulations are contained in 2 Cal. Adm. Code Sections 18702, 18702.1 and 18702.2 (copies enclosed) and set forth different guidelines depending on the type of financial interest which would be affected.

All of the questions in your letter are premised on Mayor Pena becoming Vice-President and at least a 20 percent shareholder in PVDC. For purposes of simplicity, this letter is written as if he has already assumed those roles.

Your first question concerns Mayor Pena's ability to participate in decisions affecting PVDC in the event PVDC makes application for any project approval or enters into any contract with the City of La Quinta.

Mayor Pena is an officer and holds an investment interest in PVDC. Accordingly, Mayor Pena may not participate in any decision which will have a reasonably foreseeable material financial effect upon PVDC. In addition, Mayor Pena may not participate in any decision where PVDC appears before him in connection with the decision. 2 Cal. Adm. Code Section 18702.1(a)(2). PVDC appears before him in connection with a proceeding if, either personally or by an agent, PVDC:

- (1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal or similar request;
- (2) Is a named party in the proceeding concerning the decision before the official or the body on which the official serves.

2 Cal. Adm. Code Section
18702.1(b)(1) and (2)

Finally, we would recommend that you consider carefully the provision of Government Code Section 1090. See footnote 1.

Your second question concerns whether the proximity of the City of La Quinta to the City of Coachella and/or the potential that both cities may contract with the same county, state and federal agencies presents any potential conflicts of interest requiring disclosure or abstention.

This is a very broad question. In general, the proximity of these two cities combined with PVDC's financial dealings with the City of Coachella may create an appearance of conflict for situations in which Mayor Pena, as an elected official of the City of La Quinta, is involved in decisions which may serve to accomplish the purpose for which he receives the income. See, Commission regulation 2 Cal. Adm. Code Section

18702.1(b)(2)(B) which prohibits a public official from participating in a decision which will affect a source of income when there is a nexus between the governmental decision and the purpose for which the official receives income. In addition, the answer to your question may depend upon whether there would be a material financial effect on PVDC, as discussed above.

Your third question concerns whether the fact that PVDC and/or the City of Coachella may enter into loan agreements with Dixie Savings and Loan, a wholly owned subsidiary of Landmark Corporation, may preclude Mayor Pena from voting on Landmark projects or presents any other potential conflict of interest relative to Mayor Pena's position as Mayor and Councilmember of the City of La Quinta.

If PVDC enters into a loan agreement with Dixie Savings and Loan, Dixie Savings and Loan will become a source of income to Mayor Pena on a pro rata basis.^{2/} If Mayor Pena's pro rata share of the loan amount is \$250 or more, Mayor Pena will be disqualified from participating in any decision which will have a material financial effect on Dixie Savings and Loan or its principal, Landmark Corporation. (See Commission regulation 2 Cal. Adm. Code Section 18706, copy enclosed.) Also, Mayor Pena will be disqualified from participating in any decision in which Dixie Savings and Loan or Landmark corporation "appears" before him. (See Commission regulation 2 Cal. Adm. Code Section 18702.1(a) (1), copy enclosed.)

Your fourth question concerns whether the Commission contemplates any other potential conflicts of interest of Mayor Pena relative to the above stated factual situation?

^{2/}Section 82030(a) provides that when an official owns, directly or indirectly, a 10% or greater interest in a business entity (here PVDC), the gross receipts to the business entity are income to the official on a pro rata (percentage) basis. Thus, when Mayor Pena owns 20% of PVDC, income to PVDC will be attributed to Mayor Pena on a 20% basis. See Carey Opinion, 3 FPPC Opinion 99 (No. 76-087, Nov. 3, 1977). Loans are income to a business entity. Section 82030(a). The source of any loan to the PVDC of \$1250 or more will thus become a source of income to Mayor Pena of \$250 or more so long as the outstanding balance remains \$1250 or greater.

Without more specific facts, we can provide only the general advice given in this letter. If, in the future, you need specific advice about a particular decision, you should not hesitate to contact us.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very Truly Yours,

A handwritten signature in cursive script that reads "John G. McLean". The signature is written in dark ink and is positioned directly below the typed name.

John G. McLean
Staff Attorney
Legal Division

Enclosures



City of La Quinta

78-105 CALLE ESTADO - LA QUINTA, CALIFORNIA 92253 - (619) 564-2246

March 4, 1986

John Keplinger, Executive Director
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

RE: Conflict of Interest Opinion Relative to John Pena,
City of La Quinta

Dear Mr. Keplinger:

The City of La Quinta, through its Mayor John Pena and City Attorney James Longtin, hereby requests a written opinion as to any potential conflict of interest under the Fair Political Practices Act relative to the following factual situation.

John Pena is a City Council Member and currently Mayor of the City of La Quinta, a general law city. Mayor Pena proposes to become a shareholder, with at least a twenty percent equity interest, and Vice-President of Pueblo Viejo Development Corporation (PVDC), a California corporation, which will engage in the planning, design and construction of development and redevelopment projects in the Coachella Valley, a geographical area which includes approximately seven cities, including La Quinta. PVDC has contracted with the City of Coachella, a neighboring city to La Quinta, to perform various marketing and feasibility studies for the future development and redevelopment of downtown Coachella. PVDC is currently negotiating an agreement with the City of Coachella wherein PVDC will have the exclusive right to joint venture and develop several designated sites within the City. PVDC is currently seeking funding for infrastructure and street improvements, city hall and park complex, apartment units, commercial shopping center, and hotel/conference center all to be constructed in joint venture with the City of Coachella.

The City of Coachella and/or PVDC could potentially obtain loans from Dixie Savings & Loan, a wholly owned subsidiary of Landmark Corporation, which is a major land developer in the City of La Quinta. PVDC, in conjunction with the City of Coachella, may also contract with the County of Riverside, and state and federal agencies relative to development and redevelopment of the above mentioned projects in the City of Coachella.

Mayor Pena and the City of La Quinta request a written opinion on the following potential conflicts of interest under the Fair Political Practices Act.

- 1) In the event PVDC makes application for any project approval or enters into any contract with the City of La Quinta, does Mayor Pena have a conflict of interest which requires disclosure and abstention as a decision-maker? We believe the answer to this question is self-evident and that Mayor Pena would have a conflict of interest requiring disclosure and abstention.
- 2) Does the proximity of the City of La Quinta to the City of Coachella and/or the potential that both cities may contract with the same county, state and federal agencies present any potential conflicts of interest requiring disclosure and abstention?
- 3) Does the fact that PVDC and/or City of Coachella may enter into loan agreements with Dixie Savings and Loan, a wholly owned subsidiary of Landmark Corporation, preclude Mayor Pena from voting on Landmark projects or present any other potential conflict of interest relative to Mayor Pena's activities as Mayor and Council Member of the City of La Quinta?
- 4) Does your office contemplate any other potential conflicts of interest of Mayor Pena relative to the above stated factual situation?

Mayor Pena will refrain from becoming a shareholder or officer of PVDC until you have rendered your opinion in this matter. He is quite anxious to obtain an expeditious decision in order that he may know how and in what manner to proceed. Your timely attention to this matter is sincerely appreciated.

Yours truly,



James Longtin,
City Attorney